

EXHIBIT D

Subject: RE: AG v OAI - preliminary agenda

Date: Wednesday, October 16, 2024 at 7:52:18 AM Pacific Daylight Time

From: Christopher S. Sun (via Alter-AI-TT list)

To: Charlotte Lopic, Homer, Carolyn M., OpenAICopyrightlitigation.lwteam@lw.com, OpenAICopyright, KVP-OAI, MicrosoftNYClassActionFDBR@faegredrinker.com, NYClassActions_Microsoft_OHS

CC: Alter-TT (Alter-AI-TT@simplelists.susmangodfrey.com)

EXTERNAL Email

Hi Charlotte,

Thanks for meeting and conferring with us. As promised, I'm following up with some proposals that we hope will resolve several of the parties' pending disputes. Given the looming deadline to file our joint status report, I've focused below on providing solutions rather than rehashing old arguments and objections. I trust you understand that I'm not waiving any of our objections by doing so.

Financial Documents: OpenAI will produce consolidated, audited financial statements encompassing the relevant business operations. OpenAI will also produce, subject to a reasonable search, non-privileged financial statements in its possession, custody, or control, showing the revenues and profits generated by each of the relevant models, to the extent such revenues and profits are recorded in the ordinary course of business. Once Plaintiffs have reviewed the consolidated, audited financial statements, OpenAI is willing to continue conferring about what, if any, additional financial information Plaintiffs are seeking.

Board Minutes: OpenAI confirms that it will conduct a reasonable search of OpenAI, Inc.'s official board minutes and will produce those minutes to the extent they fall within the scope of what OpenAI has otherwise agreed to produce. This offer is contingent on Plaintiffs confirming that they will do the same. OpenAI continues to object to Plaintiffs' demand, here and with respect to other disputes, that OpenAI review categories of documents regardless of whether it has any reason to believe any of those documents are relevant and responsive. To that end, OpenAI intends to limit its review to the board minutes that hit on the parties' agreed-upon search terms.

Governing Board Documents and Data Working Group Documents: OpenAI confirms that the currently designated custodians include individuals who have served on the Governing Board. OpenAI further confirms that, when conducting its reasonable search for the documents it has agreed to produce, it will not exclude from production non-privileged, responsive documents based solely on the grounds that the documents concern the Governing Board. With respect to the Data Working Group, OpenAI has confirmed that all of the OpenAI members of the Data Working Group are attorneys. As a result, documents relating to the Data Working Group are likely overwhelmingly privileged and conducting a search for and review of such documents would be unduly burdensome.

Access Agreement Negotiations: As we discussed, we've already designated several custodians that are knowledgeable about OpenAI's partnerships with other companies, and data

access agreement negotiations specifically. That being the case, we propose resolving this dispute by agreeing to perform a reasonable search for non-privileged documents reflecting or discussing access agreement negotiations (whether those negotiations resulted in an executed agreement or not) in the files of the currently designated custodians. The reasonable search would include both external communications with third parties and internal discussions. Given that these negotiations concern legal agreements, and the attendant privilege concerns/burden, we propose that, as part of the search, OpenAI will not review, log, or produce any internal communication that was received or sent by an OpenAI lawyer.

Models: OpenAI confirms that, when conducting its reasonable search for the documents it has agreed to produce, it will not exclude from production non-privileged, responsive documents based solely on the grounds that the documents concern GPT-1.

OpenAI Entity Documents: OpenAI will conduct a reasonable search for the corporate formation documents and operative operating agreements for the following entities: OpenAI, Inc.; OpenAI OpCo, LLC; OpenAI GP, LLC; OpenAI LLC; OpenAI Global LLC; OAI Corporation, LLC; OpenAI Holdings LLC. The remaining named OpenAI entities (OpenAI Startup Fund I LP; OpenAI Startup Fund GP I LLC; OpenAI Startup Fund Management LLC) are not involved in the relevant business operations. Their sole function is to invest in start-ups. OpenAI is willing to confer with Plaintiffs about how best to reach consensus that the Fund entities are not relevant, and is willing to prepare a declaration establishing facts to that effect. OpenAI is also willing to continue conferring with Plaintiffs about what additional documents, if any, they require with respect to the other named OpenAI entities once they have reviewed the corporate formation documents and operating agreements.

Microsoft-Related Financial Data and Communications: With respect to the financial data, and as I described during our conference, the consolidated, audited financial statements OpenAI has offered to produce should contain financial details regarding OpenAI's collaborations with Microsoft. If, after reviewing that information, Plaintiffs determine they require more information, we are happy to confer on that issue. With respect to communications, we believe that the documents Plaintiffs are interested in should be encompassed by OpenAI's other offers to produce. OpenAI has already designated several custodians that communicate with Microsoft. And, to be clear, OpenAI will not withhold responsive, non-privileged documents from production simply because they constitute communications with Microsoft. So we are not sure there is a dispute here. If there are particular topics that wouldn't be covered by our other offers to produce, we can confer about those issues.

Text Messages: OpenAI confirms that its reasonable search for the documents it has agreed to produce will encompass text messages, to the extent a custodian's text messages are likely to have relevant, responsive information. If Plaintiffs have reason to believe these custodians have sent relevant text messages, please provide that information so we may consider it.

Chris

From: Charlotte Lepic <CLepic@susmangodfrey.com>

Sent: Wednesday, October 16, 2024 5:48 AM

To: Homer, Carolyn M. <CMHomer@mofo.com>; OpenAlcopyrightlitigation.lwteam@lw.com; OpenAlCopyright <OpenAlCopyright@mofo.com>; KVP-OAI <KVPOAI@keker.com>; MicrosoftNYClassActionFDBR@faegredrinker.com; NYClassActions_Microsoft_OHS <nyclassactions_microsoft_ohs@orrick.com>

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[EXTERNAL]

Hi Carolyn, confirming we can handle filing.

Charlotte Lepic | Susman Godfrey LLP
212-729-2064 (o) | 646-421-3356 (c)

From: Charlotte Lepic (via Alter-AI-TT list) <Alter-AI-TT@simplelists.susmangodfrey.com>

Sent: Tuesday, October 15, 2024 22:54

To: Homer, Carolyn M. <CMHomer@mofo.com>; OpenAlcopyrightlitigation.lwteam@lw.com <openaicopyrightlitigation.lwteam@lw.com>; OpenAlCopyright <OpenAlCopyright@mofo.com>; KVPOAI@keker.com <KVPOAI@keker.com>; MicrosoftNYClassActionFDBR@faegredrinker.com <MicrosoftNYClassActionFDBR@faegredrinker.com>; NYClassActions_Microsoft_OHS <nyclassactions_microsoft_ohs@orrick.com>

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EXTERNAL Email

Hi Carolyn,

On a quick read, this appears to reflect the parties' agreement at our call today, with the following two caveats: (a) the parties did not agree to "citing the at-issue discovery request", and (2) some of our current drafts take the form, "The parties have a dispute regarding [X]. The parties are continuing to negotiate with respect to these issues and hope to reach an out of Court resolution, but motion practice may be required to resolve them." We believe this is consistent with the parties' discussions, but it would be good to know now if you disagree.

We too will endeavour to get you the first round as early as possible before the agreed deadline and will be available by phone for subsequent revisions.

We believe Plaintiffs can handle filing, but let us confirm tomorrow.

Thanks,
Charlotte

Charlotte Lepic | Susman Godfrey LLP
212-729-2064 (o) | 646-421-3356 (m)

From: Homer, Carolyn M. <CMHomer@mofo.com>
Sent: Tuesday, October 15, 2024 9:52 PM
To: Charlotte Lepic <CLepic@susmangodfrey.com>; OpenAlcopyrightlitigation.lwteam@lw.com;
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EXTERNAL Email
Charlotte,

We write to formalize the agenda exchange process we discussed this afternoon.

1pm Eastern / 10am Pacific tomorrow: Each party will circulate a brief, one paragraph, summary of each current issue in dispute they wish to raise for the Court. Each paragraph will be brief, neutral, and non-argumentative. There will be no attachments of confidential information. The format of each paragraph will be:

- Brief statement of the party's discovery demand, citing the at-issue discovery request.
- Brief statement of the current response/compromise offer on the table from the other party.

5pm Eastern / 2pm Pacific tomorrow:

- The receiving party will provide any edits to the response/compromise position.

I know we discussed an earlier response just to indicate whether or not we expected significant edits. We'll still try to do that as quickly as we can, but we thought it would be clearer to send a proposed final timeline. If significant revisions are needed we will endeavor to hop on the phone or otherwise resolve them expeditiously.

We propose Authors Guild handles the e-filing.

Carolyn Homer

Of Counsel
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Morrison Foerster

2100 L Street, NW, Suite 900

Washington, DC 20037

From: Charlotte Lepic <CLepic@susmangodfrey.com>

Sent: Tuesday, October 15, 2024 1:23 PM

To: OpenAICopyrightlitigation.lwteam@lw.com; OpenAICopyright <OpenAICopyright@mofo.com>; KVPOAI@keker.com; MicrosoftNYClassActionFDBR@faegredrinker.com; NYClassActions_Microsoft_OHS <nyclassactions_microsoft_ohs@orrick.com>; Charlotte Lepic <CLepic@susmangodfrey.com>

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External Email

Counsel,

Apologies for the duplicate email. We have received and discussed OpenAI's responses to RFPs 71-83, and have no further disputes about those requests to raise with the Court at this time other than those specifically outlined below.

We have not, however, received OpenAI's responses to RFPs 50, 52, 59-63, or 65-70. (See my email of Oct. 4, following up on your email of Sep. 19, itself promising a response on these RFPs after we followed up on Aug. 27, Sep. 6, and Sep. 16; see also my full summary of the meet and confer history on these RFPs set forth in my email of Oct. 9.) We intend to raise those RFPs with the Court.

Additionally, we wish to address with the Court the pace of discovery.

Please be prepared to discuss those items in our call today.

In light of the large number of items for discussion, it would be helpful if OpenAI could offer more time or a more focused set of issues to discuss. If certain members of your team are only available at certain times, we are happy to let that availability guide the agenda for today's call.

Many thanks,
Charlotte

Charlotte Lepic | Susman Godfrey LLP
212-729-2064 (o) | 646-421-3356 (m)

From: Charlotte Lepic (via Alter-AI-TT list) <Alter-AI-TT@simplelists.susmangodfrey.com>

Sent: Tuesday, October 15, 2024 12:08 AM

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Cc: Alter-TT (Alter-AI-TT@simplelists.susmangodfrey.com) <Alter-AI-TT@simplelists.susmangodfrey.com>
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EXTERNAL Email

Counsel,

As it stands, the items we may wish to flag for the Court are the following:

OpenAI:

1. Deposition coordination
2. Licensing
 1. Internal communications
 2. Communications with third parties with whom a license did not result
3. With respect to which models OpenAI will produce documents
4. Responses to RFP Nos. 90-94 and similar RFPs that enquire as to the relationship among the entities
5. RFP 32, financial information, and communications with Microsoft
6. Board documents, Governing Board documents, and Data Working Group documents
7. RFPs 71-83
8. Text messages of Sam Altman, Mira Murati, Greg Brockman, and Angela Jiang.
9. [X.com](#) direct messages of Chelsea Voss, Sam Altman, Greg Brockman, and Nick Turley.
10. Virtual data rooms, Notion, Asana, Salesforce
11. Complaints
12. Custodians

Microsoft:

1. Text messages of Jonathan Tinter, Dee Templeton, and Kevin Scott

We look forward to discussing tomorrow.

Kind regards,
Charlotte

Charlotte Lepic | Susman Godfrey LLP
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